

TALCB Bulletin



TALCB was created by an act of the Texas Legislature in 1991 to license, certify and regulate real estate appraisers in Texas under state and federal laws. In 2011, TALCB's jurisdiction was expanded to register and regulate appraisal management companies.

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From the Chair...

The Board met for its regular quarterly meeting on Friday November 20th to hear disciplinary matters, consider and adopt rules and conduct other routine business. We also received progress reports from our advisory committees and from the Commissioner and key agency staff. Most of what the agenda accomplished is the final implementation of items related to SB 1007 from the 2015 legislative session.

The Board also appointed a working group to be coordinated by Board member Jesse Barba to explore the appropriate implementation of the authority to conduct fingerprint-based background checks. The working group is tasked to ensure that all stakeholders have an opportunity to voice specific input for the shaping of a recommendation before this rule is proposed. Watch the agency website for meeting times and information about the important work of this group.

One proposed rule that had very high interest was a potential amendment to the scope of work section of the rule offering guidance to Appraisal Management Companies for appraisal reviews needed to meet the requirement for review of 5% of appraisal reports ordered in Texas each year. If you are interested, please make sure you provide comments to general.counsel@talcb.texas.gov by January 15th. Thanks.

We were reminded that the FFIEC's Appraisal Subcommittee (ASC), our federal oversight agency, will be visiting the agency for their biennial audit in February of 2016. Their results will be reported to the Board at our next meeting on February 19th.

We look forward to another exceptional report.

Two other accomplishments in areas other than agency policy are worthy of note. In this season of giving, the staff committed almost \$20,000 to charitable causes through 2016 payroll deductions as part of the State Employee Charitable Campaign (SECC) program. And the Committee for People with Disabilities of the City of Austin Mayor's Office recognized the agency with their Distinguished Service Award as 2015 Employer of the Year for our outstanding level of participation in providing training opportunities for folks of all ages with special needs. Many thanks to Mariah Jackson, the agency's program manager, for her dedication to this effort – very well done!

As this Holiday season rapidly approaches, we hope the time is special for each of you – and filled with tremendous sense of fulfillment and the joy of family sharing.



Chair, Jamie Wickliffe

When Talking about “Value”, Choose Your Words Carefully, Continued From TREC Advisor (Page 3)

Precision Offers Protection

While there are certainly instances where the term “value” is used generically in the realty marketplace, as professionals, we are required to be more precise in our language. This is especially true in our advertising which tends to use simple and brief terminology. We know how to do this – we already do it all time. We differentiate between brokers and sales agents, and between REALTORS and other license holders, even when our clients may not fully comprehend the implications of the distinction. We explain the difference between a customer and a client, to ensure either party does not misunderstand the scope of professional assistance we can offer. We carefully distinguish between “tax value” and “market price” to ensure our clients are both realistic and fully informed. To serve our clients competently – and to avoid misleading them, it is required that we are also able to clearly explain the difference between “sale price” and “market value”.

Price vs Value

To start, a sale “price” is the amount of money that the buyer agrees to pay for, and for which the seller agrees to transfer, the property – think of it as the “exchange” price. Based on a widely variable set of determinate and indeterminate factors, this amount may be very close to, or very far from, the “market value” of a property. “Price” is just one element to be taken into consideration when determining “market value”. Often it can be the most predictive element, but that does not make it equivalent.

What about the potential for a change in property use? Or the zoning classification? What about an easement or some other key entitlement or restriction? Would any of these variables affect market value? Of course they would! Without a

detailed analysis performed under recognized methods and techniques, and using current data to consider all three major approaches to value – income potential, comparable sales and replacement costs, and then reconciling those relevant results, a fair “market value” cannot be reliably determined. And these skills are precisely what an appraiser is trained to do.

And this is why the lending community relies almost exclusively on an appraisal report to estimate the “market value” of the collateral property when making a mortgage loan. A BPO just won’t cut it. There are many circumstances for which a CMA or a BPO provide the kind of information needed to assist an owner or the owner’s agent in evaluating the options for dealing with a specific property – versus the structured, detailed analysis provided by an appraisal report. But that does not make them equivalent. A BPO or CMA is not a comprehensively sufficient analysis to establish “market value”, though it may be done competently enough to support a likely sales price prediction or a listing price marketing strategy.

The Take-Away

So, unless you hold a current appraiser license, the next time someone asks you “What do you think that property is worth?”, choose your words carefully when you answer. “In today’s market, I think it would sell for \$XX” is always a more appropriate response for a real estate professional – broker or sales agent. The most professional approach is to simply avoid using the term “value” without an appropriate prior qualifier that makes a clear distinction that you are not offering “an opinion of value” - which is the legal definition of an “appraisal” in Texas, and requires an appraiser license to do competently and legally.

Criminal History Background Check Implementation Working Group Members Appointed

The Board has appointment members to a working group which will make recommendations to the Board for Implementation of the Appraiser Qualifications Board (AQB) criteria for appraiser criminal history background reviews. The members of the working group are as follows:

- Tony Pistilli, Chief Appraiser, Solutionstar Settlement Services, North Richland Hills, TX
- Randall Kopfer, Senior Real Estate Representative – Appraiser, Lower Colorado River Authority, Austin, TX
- Kris Kastner, Certified Residential Appraiser & Owner/Operator, Brazos Valley Appraisals, College Station, TX
- William Trombly, Licensed Appraiser, Trombly Appraisals, LLC, Houston, TX
- Kathleen Muneio, Compliance Director/HR Manager, The William Fall Group, Inc., Toledo, OH
- Jeff Dickstein, Chief Compliance Officer, Pro Teck Valuation Services, Waltham, MA

The appointed working group will have their first meeting in January of 2016. These members have an important and essential task ahead of them. Congratulations to the appointed members.

TALCB Enforcement Actions

The Texas Appraiser Licensing and Certification Board publishes their enforcement actions regularly on the new TALCB website. To read the reports please go to the [TALCB website and click](#) on, public and disciplinary actions.

IMPORTANT DATES TO REMEMBER

TALCB Board Meeting—February 19

Check the TALCB website regularly for postings of all of our upcoming meetings.

Experience Audits: What are they and What Should I Pay Attention To?

Applicants for a license with the Board are required to satisfy an experience component to their application in addition to the examination, education and criminal history requirements.

While the amount of experience hours required varies depending on the license category, all applicants must have their claimed experience audited. State and federal law requires the Board to do so by selecting a representative sample of an applicant's work product, and reviewing the appraisal reports and work files for compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). TEX. OCC. CODE §§ 1103.205 and 1103.206. An applicant whose work product does not generally comply with USPAP may not be granted a license, so the experience audit is an important part of the process applicants should know about.

The Experience Audit Process

Applicants must submit an experience log and affidavit, which identifies all the work product being claimed for credit. The experience log and affidavit must be signed by the applicant and notarized, and the supervisory appraiser must sign the experience log. When submitting experience remember anything claimed for credit must:

- Fall within the categories of experience allowed under the Appraiser Qualifications Board criteria;
- Be performed when the applicant has legal authority to do the work (i.e., held a valid license or had other legal authority to perform the work claimed for credit);
- Generally comply with USPAP;
- Be supported by work files and appraisal reports; and
- Include evidence in the appraisal report showing the applicant was named or noted as having actively participated in the appraisal process. Merely observing your supervisory appraiser is not enough.

If the work product does not satisfy these requirements, an applicant may not be granted experience credit and the applicant's license application may be denied. 22 TEX. ADMIN. CODE § 153.15(h).

Once the application materials are complete, and

Board staff has confirmed the applicant has the correct amount of hours and months of experience, the completed experience log and affidavit are forwarded to the Standards and Enforcement Services Division ("TALCB SES") to conduct the audit. Applicants will receive correspondence from TALCB SES notifying them of the audit process and requesting 2 samples of their work product (2 appraisal reports and work files), which must be delivered to the Board within 60 days of the notice.

Once the Board receives the requested material, an appraiser investigator will be assigned to conduct the experience audit. Appraiser investigators all have extensive and varied experience working the in appraisal industry; all appraiser investigators are certified appraisers with residential and commercial backgrounds.

The appraiser investigators will examine appraisal reports and work files to evaluate both for USPAP compliance and the other items noted above. When the audit is complete, a report will be prepared for each sample of work product reviewed. The audit reports are then reviewed by an attorney and the division director before making a decision on how to proceed with the audit.

Results of an Audit

In general there are four different outcomes that can result from an audit:

- The application is approved. If an applicant meets the requirements noted above and the work generally complies with USPAP, the audit will be cleared. So long as all the other licensure requirements are met (examination, education, etc.), the license will be issued.
- The application is approved on a contingent basis. If the work product has some compliance issues that are not too serious, an applicant may be offered the option of completing additional education, taking mentorship with a Board-approved mentor and/or submitting an additional portion of experience for evaluation. After completing these additional agreed-upon terms, the application may be approved. This tool is used to avoid denying applications where the applicant could improve their skills and correct deficiencies with some additional study.

- The application is approved for a probationary license. If the work product has some compliance issues that are not too serious, the applicant may be issued a license on a probationary basis. TEX. OCC. CODE § 1103.2091. The Board may set “terms and conditions” for the probationary license which may include remedial education, supervision by another appraiser, limitations on scope of practice or regular reporting to the Board. 22 TEX. ADMIN. CODE § 153.20(i). People who hold a probationary license must disclose this fact to clients prior to accepting an appraisal assignment. TEX. OCC. CODE § 1103.2091(c).
- The application is denied. If the work product does not comply with USPAP or does not comply with the points noted above, the application may be denied. A written notice of denial is sent to the applicant, explaining the basis for the denial. An applicant has 30 days from receipt of that letter to appeal. If appealed, a hearing is scheduled with the State Office of Administrative Hearings (“SOAH”) where the staff and the applicant put on evidence, testimony and argument about whether the work product meets the requirements. The SOAH administrative law judge then issues a written decision which is presented to the Board for action. If the denial is upheld the applicant must wait at least one year to reapply. If the denial is overturned, the license will be issued so long as all other licensure requirements are met.

What to Watch For

During the course of conducting audits, we encounter a variety of issues. Since these are issues that have caused applicants problems in the past, we wanted to highlight them:

- Does it comply? Ensure the work product on your experience log complies with USPAP. If it is fee appraisal work, make sure you are meeting your obligations under Standards 1 and 2. If the work you are claiming credit for is a review appraisal, make sure you’ve satisfied the requirements under Standard 3 (and if you also made value conclusions, Standards 1 and 2). If you are claiming credit for mass appraisal work, review the requirements under USPAP Standard 6 to ensure you’ve met them.
- Is your contribution disclosed? Make sure that you are being named in the appraisal report or

signing it. To comply with USPAP and the Board’s experience audit rules, the report should also detail the significant professional assistance and active participation that you provided for that assignment. If some of your work product does not meet this requirement, let the Board staff know this up front. Do not attempt to cover up the issue or alter the appraisal and work file submitted for audit. That only causes problems.

- Do you have your work files? Be careful to maintain and provide your work files when requested. Board staff cannot conduct the required audit without a complete work file. Plus, keeping a work file that supports your opinions and conclusions made as an appraiser is a requirement of USPAP. Do not attempt to conceal a deficient work file by adding material after the fact. That only causes problems.
- Did you read what you signed? Pay attention to what you are signing. When you complete the experience log and the affidavit, read it carefully and look at the language. Make sure you understand what you are certifying by signing and submitting the document to the Board. Remember an affidavit is a sworn statement, made under oath. It can have significant legal consequences, including criminal penalties, when people knowingly make false statements submitted to the Board. Make sure you are comfortable that you are meeting the terms of that certification before you sign it. This is likewise applicable to the appraisal reports you are claiming for credit. Read and review the certification contained in the report before you sign it or add your name to the report. Make sure you agree that you have done all the things described in the certification and are confident with the quality of the work.

What to Remember

Remember that applicants must have their work product audited for compliance with USPAP and other requirements. If the work product does not comply, the application may be denied or a contingent approval agreement (requiring additional training) or a probationary license (with terms and conditions) may be offered to the applicant. Make sure to review the requirements, so you can avoid potential problems during the audit. Consider the “what to watch for” items listed above, so your audit avoids issues that could prevent you from obtaining a license.

Rules and Forms Actions at the November 20th Board Meeting

The Board took the following actions regarding rules and forms at its meeting on November 20, 2015. You may review the full text of all rules actions on the [Rules and Laws section](#) of the TALCB website. The revised forms are available on the [Forms section](#) of the TALCB website.

EMERGENCY RULES EXTENDED

The Board extended emergency amendments to the following rules at its meeting on November 20, 2015. The emergency amendments to these rules will remain in effect for an additional 60 days. The Board has also adopted these same amendments as described below under "Adopted Rules."

22 TAC §153.9. Applications

Emergency amendments to this rule implement changes to Chapter 55, Texas Occupations Code, adopted by the 84th Legislature. The amendments align the Board's rule with the statutory changes, which are effective September 1, 2015.

22 TAC §153.17. Renewal or Extension of License

Emergency amendments to this rule implement changes to Chapter 55, Texas Occupations Code, adopted by the 84th Legislature. The amendments align the Board's rule with the statutory changes, which are effective September 1, 2015.

22 TAC §157.18, Motions for Rehearing; Finality of Decisions

Emergency amendments to this rule implement changes to Chapter 2001, Texas Government Code, adopted by the 84th Legislature. The amendments align the Board's rule with the statutory changes, which are effective September 1, 2015.

ADOPTED RULES

The Board adopted amendments to the following rules at its meeting on November 20, 2015. These amendments will be effective January 1, 2016.

22 TAC §153.1, Definitions

The amendments clarify the definition of "Appraiser Trainee" and add definitions of "Certified General Appraiser," "Certified Residential

Appraiser," "Licensed Residential Appraiser," "Supervisory Appraiser," and "Trade Association" to align the rule with statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

22 TAC §153.5, Fees

The amendments align this rule with statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature and add a provision for the Board to collect fees for providing certified copies.

22 TAC §153.9, Applications

The amendments align this rule with statutory changes to Chapters 55 and 1103, Texas Occupations Code, adopted by the 84th Legislature.

22 TAC §153.16, License Reinstatement

This new rule allows persons who previously held a license issued by the Board to reinstate an expired license as authorized by the Appraiser Qualifications Board (aqb).

22 TAC §153.17, Renewal or Extension of License

The amendments align this rule with statutory changes to Chapters 55 and 1103, Texas Occupations Code, adopted by the 84th Legislature.

22 TAC §153.20, Guidelines for Revocation, Suspension, Denial of License; Probationary License

The amendments implement changes regarding compliance with an agreed order of the Board and the statute of limitations for investigating a complaint to align the rule with statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

22 TAC §153.21, Appraiser Trainees and Sponsors

The amendments align the rule with statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

22 TAC §157.7, Denial of a License

22 TAC §157.8, Adverse Action Against a License Holder or Registrant

The amendments to these rules reorganize the

rules for better understanding and clarity.

22 TAC §157.9, Notice of Hearing

22 TAC §157.12, Failure to Attend Hearing; Default Judgment

The amendments align these rules with the statutory changes to Chapter 2001, Texas Government Code, adopted by the 84th Legislature.

22 TAC §157.17, Final Decisions and Orders

22 TAC §157.18, Motions for Rehearing; Finality of Decisions

22 TAC §157.20, Judicial Review

The amendments to these rules align the rules with statutory changes to Chapter 2001, Texas Government Code, and Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature. The proposed amendments also clarify the action to be taken by the Board when a motion for rehearing does not include specific grounds for rehearing.

22 TAC §157.25, Temporary Suspension

22 TAC §157.26, Unlicensed Activity

The amendments to these rules align the rules with statutory changes to Chapter 2001, Texas Government Code, and Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

22 TAC §157.31, Investigative Conference

The amendments align this rule with statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

REPEAL

22 TAC §157.19, Prerequisite to Judicial Review

The Board adopted the repeal of this rule as a result of statutory changes to Chapter 2001, Texas Government Code, and Chapter 1103, Texas Occupations Code. The language from this rule was moved to 22 TAC §157.18, Motions for Rehearing.

PROPOSED RULES

The Board proposed amendments to the following rules at the Board meeting on November 20, 2015. These proposed amendments will be on the agenda for adoption by the Board at the February 19, 2015. You may review the full text of the proposed amendments on the [Rules and Laws section](#) of the TALCB website. Written comments on the proposed amendments may be sent to general.counsel@talcb.texas.gov and must be received before 5:00pm on Friday, January 29,

2015 to be included in the materials for the November meeting. After that date, comments must be made in person at the meeting.

22 TAC §153.18, Appraiser Continuing Education (ACE)

The proposed amendments add additional opportunities for appraiser license holders to obtain continuing education credits consistent with criteria established by the Appraiser Qualifications Board and statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

22 TAC §153.22, Voluntary Appraiser Trainee Experience Reviews

The proposed rule establishes a voluntary program through which an appraiser trainee may receive feedback about their appraisal work product from the Board before submitting an application for licensure.

22 TAC §153.27, License by Reciprocity

The proposed amendments streamline the Board's process for verifying an applicant's licensure in another state and will lower the cost and simplify the application process for applicants who apply for a license under this section.

22 TAC §159.155, Periodic Review of Appraisals

The proposed amendments specify that the scope of appraisal reviews conducted under this section must be sufficient to ensure that methods, assumptions, data sources, and conclusions are reasonable and appropriate.

FORMS

The Board approved the following forms, effective January 1, 2016:

- 1) Application for License Reinstatement (LCR-0);
- 2) Trainee Work Product Review Application (TWP-0); and
- 3) Confidentiality Agreement (CA-0).

The revised forms will be available on the [Forms section](#) of the TALCB website.